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IN THE

Supreme Court of the United States

October Term, 1963

No. 362

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, a Corporation, *et al.*, *Petitioners*,

v.

WEBB'S CITY, INC., a Corporation.

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, SECOND DISTRICT

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v.

WEBB'S CITY, INC., a Corporation.

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, SECOND DISTRICT

Petitioner prays that a writ of certiorari issue to review the judgment of the District Court of Appeal of Florida, Second District, entered on April 17, 1963, in the above-entitled cause.

Opinion Below

The opinion of the District Court of Appeal of Florida, Second District, is reported at 152 So. 2d 179 (1963), and is printed as Appendix A, *infra* at page 1a. The order of the Supreme Court of Florida rejecting jurisdiction of the cause and transferring it from the Supreme Court of Florida to the District Court of Appeal of Florida, Second District, entered on September 25, 1962, is printed in Appendix B, *infra* at page 9a. The opinion of the Circuit Court of the Sixth Judicial Circuit of Florida in and for Pinellas County entered on May 31, 1961, enjoining petitioners from picketing the respondent business premises, is printed at Appendix C, *infra* at page 11a.

Jurisdiction

The final judgment of the Florida District Court of Appeal, Second District was entered on April 17, 1963 (R. 95-104). Said court has final appellate jurisdiction of the cause under Article V, Section 4(2) of the Florida Constitution. Neither further appeal nor certiorari to the Florida Supreme Court is permitted under Article V, Section 4(2) of the Florida Constitution and Florida Appellate Rules 2.1a(5) and 4.5c(6), nor is any other method of full review by a higher state court provided. Jurisdiction of this Court is invoked under Title 28, United States Code, Section 1257(3), petitioner having asserted in the courts below rights, privileges and immunities conferred by the Constitution and laws of the United States.

Question Presented

Whether petitioners, whose basic purpose is the elimination of racial discrimination throughout the United States by lawful means, have been deprived of freedom of speech and assembly, due process and equal protection of the laws guaranteed in the First and Fourteenth Amendments to the Constitution of the United States by an injunction preventing them from communicating their views on racial discrimination in a department store cafeteria, through the method of peaceful picketing, merely because they are not a labor organization?

Statement

The respondent in this case, Webb's City, is a corporation which operates a department store and other commercial facilities within the city of St. Petersburg, Fla. As part of its commercial enterprises, it maintains a lunch counter and cafeteria from which Negroes were excluded,

prior to the events which gave rise to this controversy, although Negro customers are welcomed in all phases of the Webb's City operation.

Petitioners are the St. Petersburg Branch of the National Association for the Advancement of Colored People and Dr. Ralph M. Wimbish, its president. On December 2, 1962, and for the next four days, pickets from the St. Petersburg Branch of the National Association for the Advancement of Colored People carried placards outside of Webb's City, urging the public not to patronize the store because of its undemocratic refusal to serve Negroes in its cafeteria (R. 68, T. 58, 62).[1]

On December 7, 1960, respondent filed its complaint in this cause, requesting a temporary and permanent injunction on the grounds that the acts of petitioners constituted a malicious and unlawful interference with the business of the respondent. The respondent alleged that its business had been damaged in that its receipts from gross sales on each business day of the picketing were approximately $15,000.00 below the reasonably expected revenue, and contended that it was being irrevocably damaged and had no adequate remedy at law (R. 1-4). Respondent obtained a temporary restraining order in the Circuit Court of the 6th Judicial Circuit in and for Pinellas County, Florida, preventing petitioners from picketing the premises of the respondent, and from displaying signs requesting that members of the public not trade with the respondent (R. 5-6).

On December 23, 1963, petitioner Dr. Ralph M. Wimbish moved to dissolve the temporary restraining order and filed his answer and defenses to this action (R. 20-21, 23-25). On December 27, 1960, petitioner the National Association for the Advancement of Colored People moved to dismiss the

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[1] The record of the trial in the Circuit Court of the 6th Judicial Circuit of Florida was given the single page number 68; therefore citations will be to R. (Record) 68, T. (Transcript).

complaint (R. 26). On March 8, 1961, petitioner National Association for the Advancement of Colored People entered its answer and defenses to respondent's complaint (R. 44-45).

On March 8, 1961, hearing on petitioners' motions and trial of the issues was held in the Circuit Court of the 6th Judicial Circuit in Clearwater, Florida (R. 68, T. 1-111). The evidence showed that petitioner Dr. Wimbish organized the demonstration after negotiations with the store had failed (R. 68, T. 65), in order to acquaint the public with the fact that Webb's City discriminated against Negroes in respect to service at its cafeteria (R. 62). The pickets were instructed not to interfere with anyone, to walk close to the edge of the sidewalk so that the public could pass on the street, and to keep 15 feet apart (R. 68, T. 74).

J. E. Webb, president of the respondent Webb's City, testified that he observed no violence or personal interference with customers during the picketing (R. 68, T. 17, 22). This was confirmed by other witnesses (R. 68, T. 64, 76, 90, 95). Webb also testified that the pickets had once entered the store, but had left as soon as they were asked to do so by store executives (R. 68, T. 20). Other witnesses testified that they did not observe the pickets entering the store at any time (R. 68, T. 70, 78, 104).

There was testimony that an employee emerging from Webb's City with parcels had been told by a picket that there were no cabs available, and had then gotten a ride in the automobile of another employee (R. 68, T. 53); there appeared to be no relevance in these facts. Witnesses also testified that harassing anonymous telephone calls were received by respondent (R. 68, T. 55); it was affirmatively shown that petitioners had made no such calls (R. 68, T. 67, 76, 96, 104-105).

Evidence was presented that one man marching with the pickets was arrested for obstructing a doorway (R. 68,

T. 40, 43). It was shown that this man had no connection with the petitioners (R. 68, T. 70, 76), nor was any legal action taken by petitioners on his behalf (R. 68, T. 106).

Witnesses indicated that the picketing was at all times peaceful, and that the pickets had followed instructions as to the proper method of informing the public of the discrimination (R. 68, T. 75).

Respondent then introduced evidence that its receipts for one of the days where picketing took place had dropped $11,660.00 compared with the same day the preceding year and that there had been a drop in its receipts since the commencement of the picketing (R. 68, T. 30-32). Petitioners showed that a comparison between a day preceding the picketing and the same day the previous year, also evidenced a drop in receipts (R. 68, T. 32).

On May 3, 1961, the Circuit Court of the Sixth Judicial Circuit of the State of Florida in and for Pinellas County rendered its decision, issuing a permanent injunction restraining petitioners from displaying signs on the sidewalk near respondent's business requesting that the public not trade with respondent, or picketing the premises (R. 69-76).

On June 28, 1961, petitioners filed their notice of appeal to the Supreme Court of Florida (R. 80), and on July 7, 1961, filed their assignments of error, contending that the granting of the injunction violated the Florida Constitution, Declaration of Rights, Sections 13 and 15, and the First and Fourteenth Amendments to the Constitution of the United States in that the acts enjoined constituted peaceful picketing and were legally justified and protected by the above constitutional safeguards (R. 82-84). Petitioners also filed on July 7 their directions to the clerk and designations to reporters (R. 85-88).

On May 17, 1961, respondent moved to tax costs against petitioners and to release respondent's surety; the motion was granted on July 10, 1961 (R. 89-90). On July 13, 1961,

petitioners moved to incorporate judgment for costs into the record on appeal because the judgment for costs was filed subsequent to the expiration of the appeal period; the motion was granted on July 24, 1961 (R. 91).

On May 8, 1962, the appeal was argued in the Supreme Court of Florida. On June 11, 1962, that Court ordered the cause transferred to the District Court of Appeal of Florida, Second District, within five days, unless the parties "shall bring to the attention of the court that the cause is one which should be heard and determined by this Court" (R. 93). On June 16, 1962, the petitioners filed objections to the transfer and a brief in support of the jurisdiction of the Supreme Court of Florida (R. 94). On September 25, 1962, the Supreme Court of Florida entered an order transferring the cause to the District of Florida, Second District, on the grounds that the Supreme Court of Florida had no jurisdiction over the cause (R. 94). The court rejected the argument that the decision below had construed a controlling provision of the Florida or federal Constitutions.

On April 17, 1963, the District Court of Appeal of Florida, Second District, entered its opinion affirming the judgment of the Circuit Court enjoining petitioners from peaceful picketing of the respondent department store (R. 95-104), on the grounds that the picketing was "coercive" because it injured the business of a commercial enterprise (R. 103).

Since there are no grounds for appealing the District Court's affirmance to the Supreme Court of Florida other than those already rejected by the Supreme Court of Florida, the judgment of the District Court is a final judgment within the meaning of Title 28, United States Code, Sec. 1257. Petitioner brings the cause here, seeking a review by this Court of the judgment and decree of the District Court of Appeal of Florida, Second District.

Because of a delay in preparing the record, this Court through Justice Hugo L. Black granted an order extending petitioners' time to file this petition until August 14, 1963.

Reasons for Allowance of Writ

1. The decision below, by seeking to sustain an injunction against peaceful picketing because the purpose was to advance a social goal rather than to influence the outcome of a labor dispute, is in conflict with the *ratio decedendi* in *NAACP* v. *Button*, 371 U. S. 415; *Bates* v. *Little Rock*, 361 U. S. 516; *NAACP* v. *Alabama*, 357 U. S. 449; *NAACP* v. *Louisiana*, 366 U. S. 293; *Lombard* v. *Louisiana*, 373 U. S. 267, and *Peterson* v. *Greenville*, 373 U. S. 244. This Court has made clear in these decisions that all forms of peaceful protest are protected by the Fourteenth Amendment against state intrusion. No state may, without a subordinating state interest, take steps which deter the exercise of freedom of association and group advocacy of ideas and beliefs, whether through its judiciary or other governmental branches. *Shelly* v. *Kraemer*, 334 U. S. 1, 14; *Missouri* v. *Dockery*, 191 U. S. 165, 170-171. As was said in *NAACP* v. *Alabama*, *supra*, at pps. 460-461:

> Of course it is immaterial whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters, and state action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny.

Political and social beliefs may be disseminated not only through speech but also through other forms of orderly group activity. This Court ruled in *NAACP* v. *Button*, *supra*, at page 429:

> . . . [A]bstract discussion is not the only species of communication which the Constitution protects; the First Amendment also protects vigorous advo-

> cacy, certainly of lawful ends, against governmental intrusion. *Thomas* v. *Collins*, 323 U. S. 516, 537; *Herndon* v. *Lowry*, 301 U. S. 242, 259-264. Cf. *Cantwell* v. *Conn.*, 310 U. S. 296; *Stromberg* v. *California*, 283 U. S. 359, 369; *Terminiello* v. *Chicago*, 337 U. S. 1, 4.

That the objective of "equality of treatment by all government, federal, state and local, for the members of the Negro community in this country" is lawful, is no longer open to question. *NAACP* v. *Button*, *supra*, at page 429. If a group formed to secure such equality pickets peacefully in order to present its position to the public and to urge public support, it is as justified in its conduct as a labor union which pickets for the same reason. As was said in *New Negro Alliance* v. *Sanitary Grocery Co.*, 303 U. S. 552, at p. 561:

> . . . [T]he removal of discrimination against them by reason of their race or religious beliefs is quite as important to those concerned as fairness and equity in terms and conditions of employment can be to trade or craft unions or any form of labor organization or association. Race discrimination by an employer may reasonably be deemed more unfair and less excusable than discrimination against workers on the ground of union affiliation.

Catholic, Jewish, Negro and other groups have picketed motion picture theatres and other establishments, and such picketing was held to be an unquestioned privilege. In *Ex Parte Lyons*, 81 P. 2d 190 (1938), where pickets sought to protest against stores remaining open on Sundays, the court pointed out at page 193:

> In this state the right to peacefully picket rests upon the constitutional guaranty of the right of free speech. We cannot see how the right to peacefully picket, under the guaranty of free speech, could be confined to cases in which there exists a dispute between an employer and organized labor over hours or conditions of employment, rates of

> pay, unionization of employees or employment of non-union men and not extended to a dispute between a business man and any citizen or group of citizens who may differ with him on a question of business policy. The guaranty of the right of freedom of speech is general and extends to every class or group of citizens. As that guaranty is not confined to labor organizations, decisions in those cases announcing the principles upon which the right rests in the cases involving the ordinary labor dispute are important and controlling here.

See in accord, *Rosman* v. *United Strictly Kosher Butchers*, 298 N. Y. S. 343 (1937).

Racial discrimination, like a labor controversy, is not only a matter of private concern but also a matter affecting the public, which has an interest in the welfare of all those who compose its body. The presence of a disadvantaged group in a society has a detrimental effect on the society as a whole, whether the disadvantage stems from economic reasons or from the accidental factor of skin color. As pointed out in 83 Univ. of Pa. L. Rev. 383, 384 (1935):

> The essential purpose behind the liberal attitude toward labor would seem to be the advisability of raising living standards and ultimately reducing the sociological and economic burdens upon the community as a whole which accompany the subjugation of any large group therein. The economic progress of the Negro race should, for this same reason, be a proper subject of community concern.

Where racial discrimination exists, the harm is not only economic but also moral and social. Unless the Negro is judged as an individual instead of being prejudged, he cannot attain the respect and dignity so vital to full participation in the mainstream of American life.

The only cases cited by the court below to support its theory that Negroes do not have the same right as members of a labor union to picket peacefully are *Green* v. *Samuel-*

son, 168 Md. 421 (1935) and *A. S. Beck Shoe Corp. v. Johnson*, 274 N. Y. S. 946 (1934). In the latter case, the court considered the fact that the picketing led to violence. The facts in both cases were entirely different from the instant case, since they involved attempts to induce an employer to hire a certain quota of Negro employees. As such, they fall under the rule of *Hughes* v. *Superior Court*, 339 U. S. 460, which held that a quota system is in essence a discrimination based on race, and that an attempt to secure such a system would evidence an unlawful purpose. However, this Court pointed out at page 466: "The California Supreme Court suggested a distinction between picketing to promote discrimination, as here, and picketing against discrimination." The California court assumed without deciding that ". . . if such discrimination exists, picketing to protest it would not be for an unlawful objective". *Hughes* v. *Superior Court*, 798 P. 2d at 888 (1948). The instant case clearly involves picketing against discrimination. The petitioners were seeking no special privileges or favored treatment. They wished merely to be permitted to eat in the cafeteria like respondent's other customers, since they were welcomed as buyers in all other parts of the store (R. 68, T. 11-12).

If this decision is allowed to stand, it would establish a precedent that no one may picket to publish the fact of racial discrimination. This question is one of the gravest public importance. As the court said in *Julie Baking Co.* v. *Graymond*, 274 N. Y. S. 250, 251 (1934):

> I conceive it clear in reason and principle that picketing not accompanied 'by violence, threats or intimidation express or implied,' and having a lawful purpose, should not be enjoined . . .
>
> The right of an individual or group of individuals to protest in a peaceable manner against injustice or oppression, actual or merely fancied, is one to be cherished and not to be proscribed in any well-ordered society. It is an essential prerequisite of free men living under democratic institutions.

It cannot be denied that at present in America, a struggle is taking place between those who wish to preserve special privileges for the white race which are denied to other races, a' ' those who believe in the importance of equal treatmen. and equal opportunity for all races. Because the only proper way for the goal of equal treatment to be achieved in a free society is by peaceful means, it is incumbent that peaceful avenues not be closed.

2. The decisions of this Court have established that picketing for a lawful purpose cannot be enjoined unless it is accompanied by violence, threats, or intimidation. *Drivers Union* v. *Meadowmoor Dairies*, 312 U. S. 287; *Cafeteria Union* v. *Angelos*, 320 U. S. 293; *Teamsters Union* v. *Vogt*, 354 U. S. 284; *Thornhill* v. *Alabama*, 310 U. S. 86. The court below seeks to define petitioners' conduct as "coercive" because their attempt to enlist public support for their position was through the medium of picketing which allegedly resulted in a loss of profits by respondent. However, "coerciveness" refers to the conduct of picketing and not the result. A loss of profits, even if proven, would not render the picketing unlawful. A member of the public cannot be deprived of the right to refuse to purchase goods or to attempt to persuade others not to purchase goods from persons with whom he is not in competition. *Apex Hosiery* v. *Leader*, 310 U. S. 469; *Rice* v. *Asheville Ice Co.*, 169 S. E. 707 (1933); *Dallas General Drivers* v. *Wamix, Inc.*, 295 S. W. 2d 873 (1956); *Lineberger* v. *Colonial Ice Co.*, 17 S. E. 2d 502 (1941).

The record in this case shows that the picketing was at all times peaceful. The pickets marched 15 feet apart and did not interfere with respondent's customers in any way (R. 68, T. 74). Incidents which respondent brought into the record, such as the receipt of anonymous telephone calls (R. 68, T. 55) and the arrest of a man who had marched with the pickets but was unknown to them (R. 68, T. 70, 76), had no relation to petitioners' activities. Indeed, both

the respondent's president and the police officer who was on the scene during the picketing testified that there was no violence (R. 68, T. 22, 49). The fact that peaceful picketing may be inconvenient or annoying to someone in no way outweighs the importance of the right. *People* v. *Kiernan*, 26 N. Y. S. 2d 291 (1940); *People* v. *Barkal*, 36 N. Y. S. 2d 1011 (1942).

Respondent argues that a picket line has an influence different from that flowing from appeals only by the printed word. *Hughes* v. *Superior Court, supra.* However, this Court has held that the effect of picketing is only unlawful when it goes beyond the mere influence exerted by the fact of picketing itself. *Cafeteria Union* v. *Angelos, supra*, at 295.

Florida law also indicates that picketing can be enjoined only when it is not peaceful. Laws of Florida 1943, c-21968, Section 9 (Fla. Stat. Ann., Section 447.09) specifies:

> It shall be unlawful for any person: . . . 13) To engage in picketing by force and violence, or to picket in such a manner as to prevent ingress and egress to and from any premises, or to picket other than in a reasonable and peaceful manner.

And in the case of *International Ladies Garment Workers Union, Local Chapter No. 415* v. *Sherry Manufacturers Co.*, 115 So. 2d 27, 29 (1959), the court reversed a judgment granting an injunction, ruling:

> Since the testimony failed to disclose any acts of violence in connection with the picketing, the effect of the chancellor's order was to enjoin peaceful picketing. Therefore, under this Court's opinion in *Amalgamated Clothing Workers of America, Local 694, CIO-AFL* v. *Donald S. LaVigne, Inc.*, Fla. App. 1958, 111 So. 2d 462, that portion of the chancellor's order enjoining picketing was error and is hereby reversed.

In the instant case, the court below has no basis upon which to prohibit petitioners from exercising their rights of freedom of speech, association and assembly guaranteed by the Fourteenth Amendment of the Constitution of the United States. *Bates* v. *Little Rock, supra*, pages 522-523. This Court has ruled that ". . . a State cannot foreclose the exercise of constitutional rights by mere labels." *NAACP* v. *Button, supra*, at page 429.

CONCLUSION

For the foregoing reasons, this petition for writ of certiorari should be granted.

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APPENDIX A

Opinion of the District Court of Appeal of Florida, Second District

April 17, 1962

BARNS, PAUL D., *Associate Judge.*

The appellee, Webb's City, Inc., brought a suit in equity seeking an injunction against the appellants, National Association for the Advancement of Colored People, (hereinafter referred to as NAACP), and Ralph M. Wimbish for interference with the business of the Webb's City by picketing its place of business and inducing a customer boycott. At final hearing a permanent injunction was entered against the defendants whereupon they brought this appeal. We fail to find error and affirm.

The Chancellor's findings of fact and final decree is as follows:

CHANCELLOR'S FINDINGS OF FACT AND FINAL DECREE

"1. This Court has jurisdiction of the parties and of the subject matter of this cause.

"2. The plaintiff is a Florida corporation privately owned and organized and doing a general mercantile business in the City of St. Petersburg, Pinellas County, Florida.

"3. The defendant National Association for the Advancement of Colored People, commonly known as the NAACP, is a non-profit New York corporation authorized to operate in the State of Florida and having a local chapter in St. Petersburg, Florida, chartered by said corporation.

"4. The defendant Ralph M. Wimbish is President of the St. Petersburg Chapter of the defendant corporation, and the defendant Bette C. Wimbish is the wife of the defendant Ralph M. Wimbish.

Appendix A

"5. The plaintiff sought and this Court issued on December 6, 1960 a temporary restraining order restraining the defendants, all members of the St. Petersburg chapter of the NAACP, and all other persons acting in conjunction with the named defendants from committing any of the following acts.

"(a) Displaying signs, posters or handbills requesting that members of the public not trade with the plaintiff, either on the premises of the plaintiff or on the sidewalk immediately adjacent thereto.

"(b) Picketing the premises of the plaintiff located at 128 Ninth Street South, St. Petersburg, Florida, or interfering in any manner whatsoever with the free ingress and egress of the customers of the plaintiff at said place of business.

"(c) Placing telephone calls to the place of business of the plaintiff, except for the purpose of transacting legitimate business with the plaintiff.

"(d) Threatening any employee of the plaintiff, or threatening any person providing transportation to any such employee from his residence to the place of business of the plaintiff.

"6. The plaintiff alleges that the acts which have been enjoined were done with malicious intent to injure the business of the plaintiff and force the plaintiff to manage its business in a manner to suit the corporate defendant, and that said acts of the defendants were in fact injurious to the plaintiff's business. The plaintiff contends that such picketing is unlawful and subject to injunction in equity.

"7. The defendants challenge the temporary injunction previously issued herein on the ground *inter alia* that injunction is not a proper remedy and insist that any permanent injunction in this cause would be violative of

the defendants' rights as guaranteed by the Fourteenth Amendment to the Constitution of the United States and by Sections 13 and 14 of the Declaration of Rights of the Constitution of the State of Florida. The defendants contend in effect that the picketing in this case was peaceful, as planned, and that peaceful picketing to impel compliance with the social and economic goals of the defendants is lawful and not subject to injunction.

"8. On December 2, 1960 a named group of approximately thirty men and women identified with the defendants, other than Bette C. Wimbish, began picketing the premises of the plaintiff in St. Petersburg, Florida, carrying large placards reading as follows:

> "DON'T BUY WHERE YOU CANNOT WORK ON ANY JOB OR BE UPGRADED TO BETTER PAYING POSITIONS."
>
> "BUY WITH FRIENDS, MERCHANTS WHO TREAT YOU WITH HUMAN DIGNITY."
>
> "DON'T PAY TO BE SEGRATED (sic). DON'T BUY FOR CHRISTMAS. JOIN THE NAACP'S SELECTIVE BUYING PROTEST."
>
> "DON'T BUY WHERE YOU AREN'T WELCOME."

"9. The defendants' picketing demonstration was planned and organized by the corporate defendant, acting through the Youth Counsel and the Selective Buying Committee of the St. Petersburg Chapter of the NAACP, with the intent to disrupt and discourage trade with the plaintiff and in protest of the plaintiff's policies of lunch counter segregation and not having Negro employees more in proportion to the percentage of plaintiff's Negro trade and not employing Negroes in top administrative positions.

"10. On December 2, 1960 the march of the picketers included an inside demonstration within the trading area of plaintiff's premises.

"11. The corporate defendant and its agents who organized the demonstration did not limit participation in the picketing to members of their organization, but on the contrary invited participation in the demonstration by any interested citizens.

"12. On December 6, 1960 one Jack Morrison, Jr., was arrested by the City Police of the City of St. Petersburg on a charge of unlawfully trespassing on the private property of the plaintiff, the evidence disclosing that said Jack Morrison, Jr., although not shown to be a member of the NAACP, was then and there an active participant in the demonstration, was obstructing an entrance to the plaintiff's premises and in so doing had been standing upon the threshold of said entrance. Subsequently the said Jack Morrison, Jr., was convicted of offense against municipal law of the City of St. Petersburg.

"13. The picketing demonstration resulted in a tense and inflammatory situation in and about the plaintiff's premises which adversely affected the peace and tranquility of the community of St. Petersburg and created an atmosphere of apprehension and potential violence.

"14. During the period from December 2 through December 6, 1960 the switchboard at the plaintiff's place of business was subjected to numerous telephone calls from undisclosed and unknown parties who used profane language directed toward the plaintiff and its employees.

"15. The aforesaid picketing continued for the period of December 2, 3, 5 and 6, 1960 and, as a direct consequence thereof, the plaintiff suffered loss of revenue of not less than $10,000.00 below the reasonably expected revenue for each of said days. These losses represented substantial damage to plaintiff's private business not adequately remediable by action or actions at law.

"• • •

Appendix A

"The Court is mindful of the various rights and freedoms comprehended, expressly or impliedly, within the protective provisions of the State and Federal Constitutions. Among these are freedom of speech and opinion and the right to protest and to seek personal betterment. Such are the indisputable rights of these defendants and of all other citizens but personal rights of this character are qualified rather than absolute because the law implicitly requires that individual rights be exercised with due regard for the rights of others who have the right to differ.

"Under the most liberal judicial concept of our constitutional system of government there remain, and should remain, some areas in which private individuals and business establishments have the legal right to pursue distinctive policies not wholly acceptable to others, and to resort to the police power of the state for relief against noxious encroachments upon such right.

"The right to protest the policies of lawful private interests such as plaintiff's may be exercised within proper limits, for example, through conventional modes of communication or by withholding patronage; but coercive and destructive picketing may be enjoined by a court of equity where, as in this case, there is no adequate remedy at law for continuing and recurring damages.

"This points up a well recognized reason for the extraordinary writ of injunction in equity. Law and order would be greatly disserved if restraint through courts of equity were not available in circumstances as disclosed by the record in this case. The only alternative of the aggrieved party, other than to surrender his legal rights, would be to retaliate in kind or resort to repeated institution of separate proceedings with respect to similar offenses after their commission. Such multiplicity of actions in police courts and law tribunals would be unduly burdensome and relatively ineffectual in curbing the unlawful

transgressions. See *Miami Typographic Union #430* v. *Ormerod, Fla.*, 61 So. (2d) 753.

"As indicated in the above cited decision of the Supreme Court of Florida, as well as in decisions of the Supreme Court of the United States, even peaceful picketing is not necessarily equated with the constitutional guarantee of freedom of speech. It follows that where picketing is damaging in purpose and effect, as in the instant case, the actions of the defendants are unlawful and are not clothed with constitutional protection.

"The defendants argue vindication of their picketing by pointing to the rectitude of their ultimate objectives, suggesting that the ends sought justify the means employed. This is a diversionary argument which begs the real question involved.

"IT IS THEREUPON ORDERED, ADJUDGED AND DECREED as follows:

"1. That the motion to dismiss made at the conclusion of the trial as to the defendant, Bette C. Wimbish, be and the same is hereby granted.

"2. That all motions to dissolve the temporary restraining order be and the same are hereby denied.

"3. That the motions to dismiss as to the defendants, National Association for the Advancement of Colored People and Ralph M. Wimbish, be and the same are hereby denied.

"4. That all motions to strike and to dismiss made preliminary to final hearing be and the same are hereby denied.

"5. That the application of the plaintiff for permanent injunction, except as to Bette C. Wimbish, be and the same is hereby granted and as to all other defendants the tem-

porary restraining order heretofore entered by this Court on December 6, 1960 is hereby continued in full force and effect and made a part of this final decree."

Is a boycott promoted by picketing to advance the interest of a particular racial or social group, other than labor organization or professional association, valid? This is a racial or social question and the laws applicable to labor disputes have no application here.

One's business, aside from the investment of money and tangible property employed therein, is in every sense of the word property, and, as such, if lawful, entitled to protection from all unlawful interference. 15 C. J. S., §§ 12, 1014, citing *Traux* v. *Corrigan* (per Justice Taft) 257 U. S. 312, 42 S. Ct. 124, 66 L. ed. 254.

The primary purpose of the picketing was to interfere with Webb's right to an unhampered market for the sale of its commodities and services by coercing customers or prospective customers into withholding patronage and thereby to cause injury to Webb's business; its purpose was to injure by inducing a customer boycott, and it did.

We are not dealing with the rights of the defendants to use concerted action in appealing to others to cease to patronize Webb's City, but to the contrary, we are dealing with the question as to whether or not such an appeal may be made by coercive picketing. As stated in *Hughes* v. *Superior Court*, 339 U. S. 460, 70 S. Ct. 718, 94 L. ed. 985:

> "[T]he domain of liberty, withdrawn by the Fourteenth Amendment from encroachment by the states, *Palko* v. *Connecticut*, 302 U. S. 319, 327, no doubt includes liberty of thought and appropriate means for expressing it. But while picketing is a mode of communication it is inseparably something more and different. Industrial picketing 'is more than free speech, since it involves patrol of a particular locality and since the very presence of a picket line may induce action of one kind or another,

quite irrespective of the nature of the ideas which are being disseminated.' Mr. Justice Douglas, joined by Black and Murphy, JJ., concurring in *Bakery & Pastry Drivers & Helpers Local* v. *Wohl*, 315 U. S. 768, 775, 776. Publication in a newspaper, or by distribution of circulars, may convey the same information or make the same information or make the same charge as do those patrolling a picket line. But the very purpose of a picket line is to exert influences, and it produces consequences, different from other modes of communication. The loyalties and responses evoked and exacted by picket lines are unlike those flowing from appeals by printed word."

The defendants had a right to buy where they please and by concerted action to cease patronizing Webb's when they considered it to their interest to do so; and in turn Webb's City had a right not to sell. As stated in Cooley in Torts 278: "It is a part of man's legal rights . . . that he be left at liberty to refuse business relations with any person whomsoever, whether the refusal rest upon reason, or is the result of whim, caprice, prejudice, or malice."

When considering the plaintiff's interest in its commercial expectancies from its business weighed against the defendants' interest in advancing their social objectives and the injury occasioned by the defendants' coercive picketing causing plaintiff's customers and prospective customers not to enter into or continue business relations with the plaintiff, it appears that the Chancellor has not erred. *Green* v. *Samuelson*, 168 Md. 421, 178 A. 109, 99 A. L. R. 528; *A. S. Beck Shoe Corp.* v. *Johnson*, 153 Miscl. 363, 274 N. Y. S. 946; Restatement, Torts, § 766; 48 Harvard Law Rev. 691, 56 Harvard Law Review 180, 513, 532 and 484 (text 486).

Affirmed.

SHANNON, *C. J.*, and SMITH, *J.*, Concur.

APPENDIX B

Order of the Supreme Court of Florida

September 25, 1962

June 11, 1962, this Court entered an order in the above cause transferring the cause to the District Court of Appeal of Florida, Second District, for lack of jurisdiction in this Court to dispose of the cause and the order stated that it would be transferred in five (5) days thereafter unless in the meantime, attorneys for the parties, or any of them should bring to the attention of the Court that the cause is one which should be heard and determined by this Court. Thereafter, on June 16, 1962, the attorneys for the appellants filed objections to said transfer and brief in support of the contention that the Supreme Court has jurisdiction of the cause, and upon consideration thereof, it is ordered that the objections to said transfer be and are hereby overruled, and the Clerk of this Court is directed to transfer this cause forthwith to the District Court of Appeal, Second District.

A True Copy.

Test:

GUYTE P. MCCORD,
Clerk Supreme Court.

Appendix B

Order of the Supreme Court of Florida

June 11, 1962

It appearing to the Court that the issues involved in the appeal in the above cause are matters within the jurisdiction of the District Court of Appeal of Florida, Second District, therefore, pursuant to the provisions of Florida Appeliate Rules, it is ordered that said cause be transferred to said District Court for consideration and determination after five (5) days from this date provided, in the meantime, attorneys of record for the parties, or any of them shall bring to the attention of the Court that the cause is one which should be heard and determined by this Court.

A True Copy.

Test:

GUYTE P. MCCORD,
Clerk Supreme Court.

APPENDIX C

Opinion of the Circuit Court of the Sixth Judicial Circuit of the State of Florida in and for Pinellas County

May 3, 1961

This cause came on for hearing upon the application of the plaintiff for permanent injunction, the motions to strike pleadings and to dismiss complaint and dissolve temporary restraining order on behalf of the defendants Ralph M. Wimbish and Bette C. Wimbish, and upon the motion to dismiss on behalf of the defendant National Association for the advancement of Colored People, a non-profit New York corporation; whereupon the Court having considered the pictorial exhibits in evidence, the testimony of the witnesses and the able arguments of counsel for the respective parties, and being fully advised in the premises, finds as follows:

1. This Court has jurisdiction of the parties and of the subject matter of this cause.

The plaintiff is a Florida corporation privately owned and organized and doing a general mercantile business in the City of St. Petersburg, Pinellas County, Florida.

3. The defendant National Association for the Advancement of Colored People, commonly known as the NAACP, is a non-profit New York corporation authorized to operate in the State of Florida and having a local chapter in St. Petersburg, Florida, chartered by said corporation.

4. The defendant Ralph M. Wimbish is President of the St. Petersburg Chapter of the defendant corporation, and the defendant Bette C. Wimbish is the wife of the defendant Ralph M. Wimbish.

Appendix C

5. The plaintiff sought and this Court issued on December 6, 1960 a temporary restraining order restraining the defendants, all members of the St. Petersburg chapter of the NAACP, and all other persons acting in conjunction with the named defendants from committing any of the following acts:

(a) Displaying signs, posters or handbills requesting that members of the public not trade with plaintiff, either on the premises of the plaintiff or on the sidewalk immediately adjacent thereto.

(b) Picketing the premises of the plaintiff located at 128 Ninth Street South, St. Petersburg, Florida, or interfering in any manner whatsoever with the free ingress and egress of the customers of the plaintiff at said place of business.

(c) Placing telephone calls to the place of business of the plaintiff, except for the purpose of transacting legitimate business with the plaintiff.

(d) Threatening any employee of the plaintiff, or threatening any person providing transportation to any such employee from his residence to the place of business of the plaintiff.

6. The plaintiff alleges that the acts which have been enjoined were done with malicious intent to injure the business of the plaintiff and force the plaintiff to manage its business in a manner to suit the corporate defendant, and that said acts of the defendants were in fact injurious to the plaintiff's business. The plaintiff contends that such picketing is unlawful and subject to injunction in equity.

7. The defendants challenge the temporary injunction previously issued herein on the ground *inter alia* that injunction is not a proper remedy and insist that any per-

mament injunction in this cause would be violative of the defendants' rights as guaranteed by the Fourteenth Amendment to the Constitution of the United States and by Sections 13 and 14 of the Declaration of Rights of the Constitution of the State of Florida. The defendants contend in effect that the picketing in this case was peaceful, as planned, and that peaceful picketing to impel compliance with the social and economic goals of the defendants is lawful and not subject to injunction.

8. On December 2, 1960 a named group of approximately thirty men and women identified with the defendants, other than Bette C. Wimbish, began picketing the premises of the plaintiff in St. Petersburg, Florida, carrying large placards reading as follows:

> "Don't Buy Where You Cannot Work on any Job or be Upgraded to Better Paying Positions."
>
> "Buy With Friends: Merchants Who Treat You With Human Dignity."
>
> "Don't Pay to be Segregated. Don't Buy for Christmas. Join the NAACP's Selective Buying Protest."
>
> "Don't Buy Where You Aren't Welcome."

9. The defendants' picketing demonstration was planned and organized by the corporate defendant, acting through the Youth Counsel and the Selective Buying Committee of the St. Petersburg Chapter of the NAACP, with intent to disrupt and discourage trade with the plaintiff and in protest of the plaintiff's policies of lunch counter segregation and not having Negro employees more in proportion to the percentage of plaintiff's Negro trade and not employing Negroes in top administrative positions.

Appendix C

10. On December 2, 1960 the march of the picketers included an inside demonstration within the trading area of plaintiff's premises.

11. The corporate defendant and its agents who organized the demonstration did not limit participation in the picketing to members of their organization, but on the contrary invited participation in the demonstration by any interested citizens.

12. On December 6, 1960 one Jack Morrison, Jr. was arrested by the City Police of the City of St. Petersburg on a charge of unlawfully trespassing on the private property of the plaintiff, the evidence disclosing that said Jack Morrison, Jr., although not shown to be a member of the NAACP, was then and there an active participant in the demonstration, was obstructing an entrance to the plaintiff's premises and in so doing had been standing upon the threshold of said entrance. Subsequently the said Jack Morrison, Jr. was convicted of offense against municipal law of the City of St. Petersburg.

13. The picketing demonstration resulted in a tense and inflammatory situation in and about the plaintiff's premises which adversely affected the peace and tranquility of the community of St. Petersburg and created an atmosphere of apprehension and potential violence.

14. During the period from December 2 through December 6, 1960 the switchboard at the plaintiff's place of business was subjected to numerous telephone calls from undisclosed and unknown parties who used profane language directed toward the plaintiff and its employees.

15. The aforesaid picketing continued for the period of December 2, 3, 5 and 6, 1960 and, as a direct consequence

thereof, the plaintiff suffered loss of revenue of not less than $10,000.00 below the reasonably expected revenue for each of said days. These losses represented substantial damage to plaintiff's private business not adequately remediable by action or actions at law.

16. The defendant, Bette C. Wimbish, took no active part in the organization of the demonstrations or in the demonstrations themselves and is therefore not a proper party in this cause.

The Court is mindful of the various rights and freedoms comprehended, expressly or impliedly, within the protective provisions of the State and Federal Constitutions. Among these are freedom of speech and opinion and the right to protest and to seek personal betterment. Such are the indisputable rights of these defendants and of all other citizens; but personal rights of this character are qualified rather than absolute because the law implicitly requires that individual rights be exercised with due regard for the rights of others who have the right to differ.

Under the most liberal judicial concept of our constitutional system of government there remain, and should remain, some areas in which private individuals and business establishments have the legal right to pursue distinctive policies not wholly acceptable to others, and to resort to the police power of the state for relief against noxious encroachments upon such right.

The right to protest the policies of lawful private interests such as plaintiff's may be exercised within proper limits, for example, through conventional modes of communication or by withholding patronage; but coercive and destructive picketing may be enjoined by a court of equity where, as in this case, there is no adequate remedy at law for continuing and recurring damages.

This points up a well recognized reason for the extraordinary writ of injunction in equity. Law and order would

be greatly disserved if restraint through courts of equity were not available in circumstances as disclosed by the record in this case. The only alternatives of the aggrieved party, other than to surrender his legal rights, would be to retaliate in kind or resort to repeated institution of separate proceedings with respect to similar offenses after their commission. Such multiplicity of actions in police courts and law tribunals would be unduly burdensome and relatively ineffectual in curbing the unlawful transgressions. See *Miami Typographic Union #430* v. *Ormerod, Fla.*, 61 So. (2d) 753.

As indicated in the above cited decision of the Supreme Court of Florida, as well as in decisions of the Supreme Court of the United States, even peaceful picketing is not necessarily equated with the constitutional guarantee of freedom of speech. It follows that where picketing is inflammatory and damaging in purpose and effect, as in the instant case, the actions of the defendants are unlawful and are not clothed with constitutional protection.

The defendants argue vindication of their picketing by pointing to the rectitude of their ultimate objectives, suggesting that the ends sought justify the means employed. This is a diversionary argument which begs the real question involved.

IT IS THEREUPON ORDERED, ADJUDGED AND DECREED as follows:

1. That the motion to dismiss made at the conclusion of the trial as to the defendant, Bette C. Wimbish, be and the same is hereby granted.

2. That all motions to dissolve the temporary restraining order be and the same are hereby denied.

3. That the motions to dismiss as to the defendants, National Association for the Advancement of Colored People and Ralph M. Wimbish, be and the same are hereby denied.

4. That all motions to strike and to dismiss made preliminary to final hearing be and the same are hereby denied.

5. That the application of the plaintiff for permanent injunction, except as to Bette C. Wimbish, be and the same is hereby granted and as to all other defendants the temporary restraining order heretofore entered by this Court on December 6, 1960 is hereby continued in full force and effect and made a part of this final decree.

DONE AND ORDERED in Chambers at Clearwater, Pinellas County, Florida, this 3rd day of May A. D. 1961.

/s/ JACK F. WHITE
Circuit Judge